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OFFICE OF PETITIONS

In re Application of :  
Henry Adam Pasternack et al :  
Application No. 09/062,969 :  
Filed: April 21, 1998 :  
Attorney Docket No. PASTERNAK 1-1-1 :  
(RM-1134) :

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed April 30, 2002, to revive the above-identified application. In view of the allegation in the petition of the timely filing of a reply and the evidence submitted in support thereof, the petition is more properly a petition under 37 CFR 1.181 requesting withdrawal of the holding of abandonment in the above-identified application and has been so treated.

The petition to withdraw the holding of abandonment is **Granted**.

The above-identified application was held abandoned for failure to reply in a timely manner to the non-final Office action mailed June 6, 2001, which set a shortened statutory period for reply of three (3) months. Therefore, a reply was due on or before September 6, 2001.

Petitioner states that the reply was in fact timely filed. To support this assertion, petitioner has submitted a copy of the return postcard which acknowledges receipt by the U.S. Patent and Trademark Office (USPTO) on September 6, 2001 of "Response dated Sept. 5, 2001 to Office action mailed June 6, 2001."

The reply acknowledged as having been received in the USPTO on September 6, 2001 is not of record in the application file and cannot be located. However, MPEP 503 states that "A post card receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO." Accordingly, it is concluded that the reply was timely received in the USPTO but was apparently lost after receipt thereof.

In view of the above, the holding of abandonment is hereby withdrawn and the application restored to pending status.

A petition to withdraw the holding of abandonment under the provisions of 37 CFR 1.181 does not require a fee and none has been charged.

The Office sincerely apologizes for the inconvenience caused petitioner in this matter.

This application is being returned to Technology Center AU 2664.

Telephone inquiries concerning this decision should be directed to Wan Laymon at (703) 305-9282.



Frances Hicks

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for Patent Examination Policy